Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 3(n)	)	
and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of	)	
Mobile Services	)	

COMMENTS OF GTE

GTE Service Corporation and its affiliated
GTE domestic telephone, service and
equipment companies

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SUMMARY

GTE Service Corporation ("GTE") addresses in these comments the Commission's Further Notice of Proposed Rule Making ("*Further Notice*") proposing a number of changes to the Part 22 and Part 90 rules in order to achieve the regulatory parity in commercial mobile radio services ("CMRS") mandated by the Budget Act. The *Further Notice* represents a significant step in the Commission's efforts, and includes a number of important proposals.

In reviewing the proposals contained in its *Further Notice* and in the comments and replies to be submitted by interested parties, GTE urges the Commission to bear in mind the following fundamental principles:

- The Commission's action should not unfairly disadvantage any CMRS provider, nor should it grant any unique competitive advantage to particular classes or groups of CMRS operators;
- The CMRS rules and policies adopted by the Commission should promote flexibility in the design, offering, and operation of services provided by all CMRS licensees; and
- The Commission should take advantage of the opportunity presented in this proceeding to streamline its regulatory requirements wherever possible.

Relying upon these principles to guide the action taken in this proceeding should help to ensure that the rules adopted will advance the continued successful development of a robust and competitive CMRS marketplace.

While the Commission specifically addresses a number of issues relating to conformance between Part 22 and Part 90 operations, it is also critical at this time for the agency to ensure that the Part 24 rules and policies are consistent with those applied to other mobile service providers. Part 24 currently contemplates granting Personal Communications Services ("PCS") licensees certain opportunities and service flexibility not accorded to at least some of the other

CMRS offerings, such as cellular service. The PCS flexibility model should be extended to all other CMRS operations.

GTE's comments also address a number of the technical, operational, and licensing proposals contained in the *Further Notice*. While complete uniformity is not necessary in all areas of these rules, the Commission must ensure that the rules adopted do not unfairly advantage particular types of service providers. In brief, GTE has reached the following conclusions:

- The co-channel interference protection criteria for cellular carriers should not be altered at this time.
- Differences in the antenna height and power limitations applicable to cellular and comparable enhanced specialized mobile radio ("ESMR") operations should not be permitted to unfairly disadvantage cellular licensees.
- Permissible uses must be defined to ensure that all CMRS operators have the same flexibility to provide services.
- The model application form represents a step in the right direction but needs further modification.
- The one-day filing window should be retained for cellular unserved area Phase II applications.
- The Commission should seek to adopt consistent policies permitting maximum pre-grant construction.
- The renewal rules and policies applied to the cellular service should be extended to all CMRS licenses.

Finally, the Commission has proposed to adopt a spectrum cap, to be applied across all CMRS subparts. GTE strongly opposes such action, which is unnecessary and will in fact undercut the regulatory parity goals. The public interest is better served by reliance on service-specific spectrum limitations (to the extent deemed necessary) like those adopted in PCS. Adoption of a blanket

spectrum cap presents a number of extremely difficult application issues, and raises distinct opportunities for inequitable treatment of CMRS entities. A blanket CMRS spectrum aggregation limit thus should be rejected at this time.

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GTE Service Corporation ("GTE"), on behalf of GTE's affiliated domestic telephone, equipment, and service companies, hereby submits these comments in response to the Further Notice of Proposed Rule Making adopted by the Commission in the above-captioned docket on April 20, 1994.[1]

I. INTRODUCTION

GTE is a leading provider of wireless telecommunications services, with offerings including cellular, satellite, and other mobile radio services such as Airfone and Railfone. In addition, GTE's domestic telephone companies provide paging services and interconnect with cellular and other wireless facilities. GTE has consistently supported the efforts of Congress and the Commission to establish a regulatory framework that will ensure the symmetrical treatment of competing mobile service providers, promote competition and economic growth in the mobile services marketplace, and eliminate unnecessary regulatory burdens. Accordingly, GTE

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-115 (May 20, 1994) [hereinafter "*Further Notice*"].

strongly supports the Commission's attempt in the *Further Notice* to identify the rule changes necessary to effectuate this result.

With the adoption of the *Further Notice*, the Commission has taken a significant step toward implementing Congress's mandate that competing mobile service providers be subject to comparable regulatory treatment.[2] Specifically, the *Further Notice* examines the impact of Congress's recent amendments to Section 332 of the Communications Act on the technical, operational, and licensing rules used to govern mobile service providers.[3] Consistent with Congress's directive, the Commission then seeks comment on how it can ensure that competitors in the mobile services marketplace are subject to balanced regulation, and broadly proposes to eliminate inconsistencies in the rules that govern substantially similar commercial mobile radio service or "CMRS" operators.[4] Comment is also sought as to whether the goal of increased competition would be served by the imposition of a general cap on the amount of CMRS spectrum that licensees may aggregate, and on the scope and application of any such requirement.[5]

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2 *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 392, Title VI, § 6002(b) (1993) ("Budget Act"). *See also* H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993) (Conference Report); H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-60 (House Report); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1418 (1993) (Second Report and Order) [hereinafter "*Second Report and Order*"].

3 *Further Notice* at ¶ 2.

4 *Id.*

5 *Id.* at ¶ 8.

II. THE ACTION TAKEN IN THIS DOCKET MUST ENSURE REGULATORY PARITY AMONG ALL CMRS PROVIDERS, ACCOMPANIED BY MAXIMUM SERVICE FLEXIBILITY AND THE STREAMLINING OF REGULATORY REQUIREMENTS

As the Commission reviews the comments and replies filed in response to the *Further Notice* and decides on the final action to be taken in this proceeding, it must bear in mind the following fundamental principles:

- First, the Commission's action should not unfairly disadvantage any CMRS provider, nor should it grant any unique advantages to particular classes or groups of CMRS operators;
- Second, the CMRS rules and policies adopted by the Commission should promote flexibility in the design, offering, and operation of services provided by all CMRS licensees; and
- Finally, the Commission should take advantage of the opportunity presented in this proceeding to streamline its regulatory requirements wherever possible.

By adhering to these precepts, the Commission will be able to formulate rules and policies capable of ensuring the successful development of a robust and competitive industry. This in turn will further the broader goals of Congress and the Commission, as well as the public's interest in enjoying a diverse array of consumer choices.

A. The Rules and Policies Adopted in this Proceeding Must Effectively Promote the Congressional and Commission Goal of Regulatory Parity Among All CMRS Providers

The *Further Notice* points out that Congress required the Commission "to modify [existing technical and operational] rules as necessary so that CMRS licensees providing substantially similar services will not be subject to inconsistent regulation arising out of their prior regulatory status."[6] GTE concurs with the Commission's

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6 *Id.* at ¶ 20.

assessment that implementation of regulatory parity does not necessarily mean that identical rule requirements must be imposed on all the various CMRS offerings.[7]

As discussed above, the rule changes proposed in the *Further Notice* are aimed at ensuring that "substantially similar" CMRS providers are subject to comparable technical, operational, and licensing requirements. Thus far, the focus of GN Docket No. 93-252 has been on equalizing the regulatory treatment of traditional private land mobile licensees (Part 90) and public mobile service providers (Part 22). GTE suggests that this stage of the proceeding offers a unique opportunity for the Commission to concentrate as well on leveling the playing field between Personal Communications Service ("PCS") operators (Part 24) and all other CMRS providers.

Specifically, as explained in GTE's *Petition for Reconsideration or Clarification* of the Commission's *Second Report and Order* in this proceeding,[8] the existing rules and policies applicable to PCS providers afford them greater regulatory flexibility than the rules that govern other CMRS licensees, particularly the cellular service. As such, the PCS rules more appropriately respond to an operator's need for the flexibility necessary to offer service packages responsive to customer demands. GTE urges the Commission to amend its rules to extend the flexibility permitted in the PCS context to all CMRS providers.

Specifically, although the Commission's rules permit CMRS PCS licensees to use a portion of their spectrum to provide private mobile radio service, the rules prohibit cellular carriers from offering anything other than common carrier communications.[9] In

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7 *Id.* at ¶ 21.

8 GTE Service Corporation, Petition for Reconsideration or Clarification, GN Docket No. 93-252 (filed May 19, 1994).

9 *See* 47 C.F.R. § 22.119 (1993). Section 22.119 states that "[t]ransmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communication purposes." The Commission recently has proposed to delete Section 22.119, in order to permit "a single transmitter to operate on both common carrier and private carrier

the *Further Notice*, the Commission proposed to extend PCS-type flexibility to operators in those Part 90 services where both CMRS and PMRS operations are allowed. In contrast, however, the Commission explicitly proposed not to offer this same flexibility to mobile service categories where only CMRS or PMRS service is permitted, including cellular.[10] As demonstrated by GTE in its pending *Petition for Reconsideration or Clarification*, this regulatory disparity will impede the ability of cellular operators to compete effectively with other CMRS providers —specifically, PCS licensees — without serving any readily identifiable purpose. This inequity can easily be resolved if the Commission extends equivalent flexibility to all competing CMRS providers. In addition, the removal of the substantial and unwarranted competitive advantage otherwise held by PCS and most Part 90 CMRS providers vis-a-vis cellular will bring the Commission's policies into closer conformance with Congress' objectives.

Similarly, under the Commission's existing rules, PCS operators are given much greater latitude than cellular licensees to incorporate fixed arrangements into their service offerings. PCS is broadly defined to include "[r]adio communications that encompass mobile and ancillary fixed communication services that provide services to individuals and businesses and can be integrated with a variety of competing networks."[11] By contrast, without a waiver, the only fixed services that cellular

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channels." Amendment of Part 22 of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier Non-Common Carrier Services, FCC 94-113, at ¶ 7 (June 9, 1994) (Notice of Proposed Rule Making and Order).

10 *Further Notice* at ¶ 147 & n.259.

11 Amendment of the Commission's Rules To Establish New Personal Communications Services, 8 FCC Rcd 7700, 7713 (1993) (Second Report and Order), *recon.*, Amendment of the Commission's Rules To Establish New Personal Communications Services, FCC 94-144 [hereinafter *"Broadband PCS Second Report and Order"*] (June 13, 1994). *See also* 47 C.F.R. § 24.5 (redesignated from 47 C.F.R. § 99.5) (defining "personal communications services"); 47 C.F.R. § 24.3 (redesignated from 47 C.F.R. § 99.3) (defining permissible PCS communications).

operators are permitted to provide are those that are "incidental" or Basic Exchange Telecommunications Radio Service ("BETRS").[12] Although the Commission has proposed to eliminate the rule that limits the fixed services that may be offered by cellular carriers,[13] the agency's existing rules place cellular operators at a distinct disadvantage by restricting their ability to provide fixed offerings as a service package component. As argued by GTE in its *Petition for Reconsideration or Clarification*, this result cannot be justified in view of Congress' mandate.[14]

B. The Rules and Policies Adopted in this Proceeding Should Promote Flexibility in the Design, Offering, and Operation of CMRS Services

GTE has repeatedly urged the Commission to implement licensing policies that are based on a philosophy of maximum open entry opportunities. Following from this philosophy is a policy that imposes minimal limitations, consistent with the interference and technical constraints applicable to the particular frequencies and services, on the parameters of a given licensee's operations. GTE is of the view, for example, that the Commission has made important steps in enhancing cellular carrier flexibility to employ innovative technologies and offer non-traditional cellular services.[15] The policies

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12 *See* 47 C.F.R. §§ 22.308, 22.93 (1993).

13 Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 FCC Rcd 3658, 3672 (1992) (Notice of Proposed Rule Making) [hereinafter *"Part 22 Rewrite"*].

14 Consistent with Congress's mandate, the Commission should also eliminate the prohibition on common carrier provision of dispatch services, 47 C.F.R. § 22.2, and the rule prohibiting wireline common carriers from becoming base station licensees in the Specialized Mobile Radio Service, 47 C.F.R. § 90.603(c). The Commission has indicated its intent to address both of these issues in an upcoming proceeding.

15 *See* 47 C.F.R. § 22.930 (1993), *as amended by* Amendment of the Commission's Rules To Establish New Personal Communications Services, 8 FCC Rcd 7700, 7713 (1993) (Second Report and Order), *recon.* Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-144 (June 13, 1994).

adopted in this and related proceedings, however, should continue those steps and ensure that cellular operators, employing their assigned licensed spectrum, are able to provide paging, ESMR-like services, and PCS offerings. Other CMRS operators should have comparable flexibility.[16] We note that, in the PCS docket, the Commission has granted to PCS providers the opportunity to "provide any mobile communications service on their assigned spectrum."[17]

As discussed above, a licensee's ability to participate in a broad array of service offerings promotes the goal of equitable regulatory treatment and maximizes the competitive potential of all CMRS providers. In addition, affording CMRS licensees flexibility in designing, offering, and operating their services will foster the public interest by: (1) letting CMRS operators devise and deliver service packages responsive to the specific needs of individual customers; (2) enabling the implementation of new technologies and technological refinements as they develop; and (3) generating competition not anticipated or foreseen by the Commission. In the instant proceeding, the Commission should endeavor to ensure that the rules applicable to all CMRS providers encourage the development of new communications options by allowing open entry into each CMRS subcategory. Consistent with this broad objective, cellular licensees should be permitted to use their licensed spectrum to offer a range of services comparable to the service offerings permitted on PCS spectrum.

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16 To the extent that certain categories of CMRS operators are permitted to provide, within a single set of frequencies, multiple types of services, the Commission's "substantially similar" analysis could be seriously complicated. It would not make practical sense, for instance, to regulate paging services provided by a cellular carrier like the stand alone paging operations authorized under Parts 22 and 90. For example, the antenna height, power restrictions, and other technical rules applied to paging operations are inappropriate for application to cellular. GTE believes that the "substantially similar" analysis must be broadly but carefully applied in order to account for multiple service offerings by a specific type of CMRS operator.

17 47 C.F.R. Section 24.3 (redesignated from 47 C.F.R. Section 99.3).

C. This Rule Making Provides a Unique Opportunity for the Commission To Streamline to the Greatest Extent Possible the Regulatory Requirements Applicable to All CMRS Providers

The Commission's review of the existing rules in Parts 22 and 90 provides an excellent opportunity for an overall assessment of the regulatory structure applicable to CMRS. The Commission should streamline its rules and policies as much as possible by modifying or eliminating unnecessary or unduly burdensome rules.

In undertaking this analysis, both the Commission and existing licensees necessarily must draw upon their own experiences under the existing regulatory regimes. Specifically, the Commission is in the best position to evaluate its success in administering and enforcing particular rules, and to adjudge whether certain rules serve valid uses. Likewise, licensees with experience under either Part 90 or Part 22 are well placed to identify, from their experience, those rules that have worked effectively, those rules that have been notably ineffective or inefficient, and those rules that are plainly unnecessary or burdensome. As indicated in the *Further Notice*, the Commission already has a substantial record in a number of outstanding rule making proceedings examining various aspects of both Parts 22 and 90.[18] GTE concurs with the Commission's intention to incorporate the record compiled in these proceedings as it attempts to formulate appropriate CMRS rules.[19]

The Commission's review should take into account the specific interests of the public, CMRS operators, and the Commission staff. In its *Second Report and Order* in this proceeding, the Commission identified three public interest objectives that serve as

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18 *Further Notice* at ¶ 7. For example, in the *Part 22 Rewrite*, the Commission proposed revisions to Part 22 that would: (1) make the rules easier to understand; (2) eliminate outdated rules and unnecessary information collection requirements; (3) streamline licensing procedures; and (4) allow licensees greater flexibility in providing service to the public. *Part 22 Rewrite*, 7 FCC Rcd at 3658.

19 *See Further Notice* at ¶ 7.

appropriate guides to the implementation of revised Section 332: (1) the stimulation of job opportunities and economic growth through increased competition in the mobile marketplace; (2) the facilitation of investment in the mobile telecommunications industry through the establishment of a stable regulatory environment; and (3) the establishment of a regulatory framework that makes access to the wireless telecommunications infrastructure available to all Americans at economically efficient prices.[20] These objectives should also direct the decisions made during this phase of GN Docket No. 93-252.

Significantly, the interests of CMRS providers and the Commission staff are generally consistent with these broader public interest goals. In particular, as discussed above, CMRS operators will benefit from the adoption of rules that afford them the flexibility to respond to consumer needs and technological developments. In addition, the adoption of rules consistent with these objectives will: (1) promote the development of new communications services, thereby stimulating the job market; (2) increase investment in the mobile services marketplace by encouraging entrepreneurial opportunities; and (3) enable a greater number of Americans to access the information superhighway by increasing the availability of a variety of service options. Similarly, the Commission staff's interest in streamlining the review of applicant and licensee filings and eliminating unnecessary regulatory review is consistent with the interests of both CMRS operators and the public in the removal of regulatory burdens that stand in the way of entrepreneurial and competitive opportunities.

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20 *Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1419-22 (1994).

III. SPECIFIC TECHNICAL, OPERATIONAL AND LICENSING REQUIREMENT PROPOSALS

The Commission has identified specific technical, operational, and licensing requirements applicable to CMRS providers under both Parts 90 and 22, and solicits comment on whether inconsistencies in these rules must be eliminated in order to avoid arbitrary and inconsistent treatment of substantially similar CMRS providers. GTE is generally of the view that the Commission will be in the best position to formulate the appropriate rules and policies if it analyzes the comments and replies consistent with the principles set forth above. GTE also submits the following comments that focus on particular technical, operational, and licensing requirements identified in the *Further Notice*.

A. Technical and Operational Rules

1. Co-channel Interference Protection Criteria

The Commission solicits comment as to whether the goal of comparable technical regulation for substantially similar services requires the revision of the co-channel interference criteria that are currently applied on a service-specific basis. The Commission tentatively finds, however, that any revision of its existing co-channel interference rules is likely to be costly and burdensome to licensees.[21] GTE concurs with this tentative finding, and urges the Commission to retain its existing requirements as applied to specific services.

Any modification of the co-channel interference protection criteria applicable to cellular operators would of necessity require the intense redesign of operational cellular systems, with likely severe disruption to the provision of service to existing users.[22]

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21 *Further Notice* at ¶ 40.

22 Similarly, the *Further Notice* properly concludes that the emission mask requirements for cellular carriers should not be altered. *Further Notice* at ¶ 43. To impose on cellular operators requirements comparable to those included in

Moreover, modification of these rules does not appear essential to the goal of regulatory parity. All CMRS operators are subject to some form of co-channel interference protection criteria. Although these rules may be different in kind, they impose essentially equivalent obligations on all CMRS licensees. Accordingly, because the burdens of adopting uniform co-channel interference protection criteria outweigh any concomitant benefit, the existing rules for each of the various CMRS services should be retained.

2. Antenna Height and Power Limits

The Commission also solicits comment as to whether the existing antenna height and power limits applicable to "substantially similar" Part 90 and Part 22 services should be amended.[23] GTE recognizes that different antenna height and power limits have historically been used in governing cellular and SMR operations and that, consequently, the reconciliation of the rules applicable to cellular and SMR providers may not be technically feasible.[24] Moreover, as discussed above, the goal of comparable regulatory treatment does not require the rules governing substantially similar operators to be identical. The Commission must ensure, however, that differences in the height and power limits applicable to cellular and wide-area SMR operations, which are functionally equivalent services, do not put cellular licensees at an unfair competitive disadvantage. Currently, the antenna height and power limits in Part 90 are higher than those in Part 22.[25] To the extent that these higher limits give

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Part 90 for SMR and ESMR operations and for Part 22 paging would also be highly disruptive, with no apparent purpose.

23 *Id.* at ¶ 48.

24 *See id.* at ¶ 49.

25 As indicated in the *Further Notice*, cellular base stations are subject to relatively strict height and power limits because cellular technology utilizes closely spaced multiple cells and frequent channel reuse. *Id.*

wide-area SMR providers a competitive edge over cellular, the height and power limits contained in Part 22 should be applied to both wide-area SMR and cellular operations.[26]

3. Permissible Uses

The Commission also seeks comment as to whether it should amend those rules contained in Parts 22 and 90 that restrict the uses permissible on particular frequencies.[27] As discussed in detail in Section II of these comments, GTE strongly supports the elimination of those rules that unnecessarily foreclose cellular licensees from enjoying: (1) the ability to provide fixed services on an equal footing with PCS operators; (2) the same flexibility as PCS and most other CMRS competitors to offer both commercial and private service under a single license; and (3) the ability to provide dispatch service. The retention of these restrictions imposes unfair and unnecessary regulatory impediments on cellular operators and seriously impairs their ability to compete effectively with PCS and other CMRS providers in contravention of Congress's mandate.

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26 *See Further Notice* at ¶¶ 49, 53. In this portion of the *Further Notice*, the Commission also proposes to apply the 1992 IEEE/ANSI standard to all CMRS and PMRS mobile units, as proposed in the *RF Radiation Notice*. As reflected in its comments filed in response to the *RF Radiation Notice,* GTE believes that Part 22 Mobile transmitters operate at power levels that should not raise concerns under the ANSI/IEEE standards. *See* Comments of GTE Service Corporation, ET Docket No. 93-62 (filed Jan. 25, 1994); Reply of GTE, ET Docket No. 93-62 (filed April 25, 1994).

27 *Further Notice* at ¶¶ 78, 79.

B. Licensing Rules and Procedures

1. Application Forms and Procedures

In general, GTE supports the Commission's proposal to use a single unified application form for all CMRS and PMRS applicants in all terrestrial mobile services.[28] GTE personnel have evaluated the proposed Form 600 and the accompanying schedules, and are of the view that the redesignated application form should be further refined to simplify the application process. To facilitate a smooth transition to the use of the new form, GTE suggests that, before the new form becomes effective, it may be useful for the Commission to conduct a workshop so that it can explain the various components of the form and the schedules, and address specific questions posed by applicants.

The proposed form indicates that the Commission contemplates requiring Part 22 applicants to provide position information in both NAD 27 and NAD 83 coordinates. The Commission has previously announced its intention eventually to convert to the updated NAD 83 coordinates, which are more accurate and consistent than the NAD 27 network.[29] Moreover, the FAA uses NAD 83 data. The continued use of NAD 27 information confuses applicants and is likely to introduce error into the records of licensees and the Commission alike. GTE thus urges the FCC to take this opportunity to convert to relying solely on NAD 83 data.

2. Mutually Exclusive Applications

Although GTE generally supports the Commission's proposals for receipt and processing of mutually exclusive applications and to use competitive bidding

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28 *Id.* at ¶ 109.

29 The Federal Communications Commission Continues To Require Applicants To use coordinates Based on the North American Datum of 1927, 7 FCC Rcd 6096, 6097 (1992) (Public Notice).

procedures, GTE vigorously opposes the agency's accompanying proposal to replace the existing filing procedures for cellular unserved area Phase II applications with a 30-day window during which the filing of mutually exclusive applications would be allowed.[30] The Commission specifically established a one-day, first-come, first-served filing window for Phase II applications in an attempt to curtail the filing of speculative applications and avoid unnecessary processing delays.[31] The amendment of the Phase II filing procedures as proposed in the *Further Notice* would undermine both of these well-settled policy objectives.

Furthermore, conversion to a 30-day filing window would be inimical to the public interest because it is likely to delay the provision of new or improved cellular service in the remaining unserved areas. It is GTE's understanding that most Phase II applications are submitted by existing cellular operators that seek to extend service into geographical areas that cannot, from a technical standpoint, be served by a stand-alone cellular system. Some of these applications involve an intentional plan to expand service, while other applications entail coverage into unserved areas as a byproduct of plans to improve service coverage within the existing cellular geographic service area ("CGSA").

Nevertheless, given the Commission's experiences with the filing of speculative cellular applications, GTE remains concerned that placing Phase II applications on public notice for thirty days and inviting the filing of mutually exclusive applications will lead to efforts by some entities to find some way to put together a competing proposal, whether valid or not. Despite the Commission's rules limiting the consideration to be

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30 *Further Notice* at ¶ 123.

31 *See* Amendment of Part 22 of the Commission's Rules To Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service, 6 FCC Rcd 6185, 6196-97 (1991) (First Report and Order and Memorandum Opinion and Order on Reconsideration).

paid in settlement of competing application proposals and petitions to deny, GTE remains concerned that converting to a 30-day filing window could invite the increased filing of illegitimate applications and discourage cellular operators from pursuing the extension of service to unserved areas.[32]

3. Pre-Grant Construction

GTE agrees with the Commission's tentative conclusion that the same rules should apply to pre-grant construction for CMRS applicants under both Parts 22 and 90.[33] GTE supports rule changes to provide all CMRS licensees maximum flexibility to engage in pre-grant construction, and suggests that the current pre-grant construction procedures available under Part 90 should be extended to all CMRS operators. Clearly, any such commencement of construction in advance of a grant of a radio license from the FCC would have to be in full compliance with relevant environmental and aviation hazard rules.[34]

4. License Term/Renewal Expectancy

The *Further Notice* proposes "to extend [the Commission's] existing rules and case law regarding renewal expectancy to all Part 90 CMRS licensees."[35] This is consistent with the Commission's decision to adopt a renewal expectancy for Part 24 licensees that is virtually identical in its wording to the language found in Section

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32 The filing of applications aimed solely at extracting a settlement or harassing existing operators appears to have occurred despite the fact that Commission's Rules expressly prohibit this type of activity. *See, e.g.*, 47 C.F.R. § 22.928 (1993). Nor is the use of competitive bidding likely to succeed in stemming the filing of insincere unserved area applications. Because these applicants have no intention of securing an actual license, they are not likely to be deterred by the prospect of having to submit a bid.

33 *Further Notice* at ¶ 137.

34 *See id.*

35 *Id.* at ¶ 140.

22.941(a) of the Commission's Rules.[36] In the interest of "achieving regulatory symmetry,"[37] GTE supports the application of the cellular renewal rules,[38] policies, and procedures to all CMRS licensees.

5. Assignment of Licenses and Transfers of Control

GTE agrees with the concerns voiced by those parties that filed petitions for reconsideration of the Commission's *First Report and Order* in the Competitive Bidding Proceeding.[39] In the *First Report and Order*, the Commission adopted rule changes requiring all applicants for voluntary transfer of control or assignment of a license acquired through a Commission lottery to file, along with the transfer application, the associated contracts for sale, option agreements, management agreements, and any other documents disclosing the total consideration received in return for the transfer of the license. The transfer disclosure requirement applies to all licenses ever issued via lottery whether the underlying facilities are constructed or not.[40]

The parties seeking reconsideration of the *First Report and Order* generally argue that the transfer disclosure requirement is unnecessarily overbroad and requires the submission of highly proprietary information that cannot be publicly disclosed

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36 *See* 47 C.F.R. § 24.16.

37 *Further Notice* at ¶ 140.

38 In particular, GTE believes that the procedures embodied in Section 22.941 and Section 22.942 as adopted pursuant to Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Services, 8 FCC Rcd 2834 (1993) Memorandum Opinion and Order on Reconsideration), would garner the same public interest benefits for Part 90 CMRS offerings as they were designed to bring to cellular services.

39 Implementation of Section 309(j) of the Communications Act, Competitive Bidding, 9 FCC Rcd 1329 (1994) (First Report and Order).

40 *Id.*

without adversely affecting the interests of the parties.[41] GTE agrees, and urges the Commission to take this opportunity to modify the transfer disclosure requirement to make plain that it applies only in those circumstances where unjust enrichment and speculation are likely to be of concern. In addition, the Commission should modify the transfer disclosure requirement to permit applicants to file summaries or extracts rather than the extensive documentation currently required, and should ensure that this proprietary information will not be subject to disclosure under the Freedom of Information Act.[42]

IV. THE PUBLIC INTEREST WOULD NOT BE SERVED BY THE ADOPTION OF A CAP ON THE AMOUNT OF CMRS SPECTRUM THAT LICENSEES MAY AGGREGATE IN A GIVEN GEOGRAPHIC AREA

Finally, in the *Further Notice*, the Commission expresses the concern that the flexible regulatory environment applicable to CMRS providers may permit licensees to accumulate large quantities of spectrum in a given area, thereby allowing them to acquire excessive market power to the detriment of competitors.[43] To forestall this possibility, the Commission suggests that it may be appropriate to establish a spectrum cap across all CMRS services.[44] In addition, the Commission tentatively concludes

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41 *See, e.g.*, Personal Communications Industry Association, Petition for Partial Reconsideration, PP Docket No. 93-253, at 5-8 (filed March 28, 1994); Comments of Geotek Communications, Inc., Petition for Reconsideration, PP Docket No. 93-253, at 5-8 (filed March 28, 1994); Land Mobile Communications Council ("LMCC"), Request for Clarification or Reconsideration, PP Docket No. 93-253, at 8-9 (filed March 28, 1994); Southwestern Bell Mobile Systems, Inc., Petition for Reconsideration, PP Docket No. 93-253, at 3-5 (filed March 28, 1994); National Association of Business and Educational Radio, Inc. ("NABER"), Petition for Clarification and Reconsideration, PP Docket No. 93-253, at 3-4 (filed March 28, 1994).

42 These specific requests are advanced in the petitions filed by NABER and LMCC.

43 *Further Notice* at ¶ 89.

44 *Id.*

that, if a spectrum cap is mandated, it should approximate the amount of spectrum that can be held by a single licensee under the combined broadband and narrowband PCS allocations. Accordingly, the Commission suggests the use of a 40 MHz limit adjusted upward to provide reasonable flexibility for PCS and other existing mobile services providers to offer both broadband and narrowband services.[45] The Commission also tentatively proposes that all CMRS ownership interests of five percent or more should be attributed to the holder of such interests for purposes of applying the spectrum cap.[46]

The Commission recognizes that the adoption of a CMRS spectrum cap raises a multitude of extremely difficult issues, seriously complicating the fair application of the cap in practice, and seeks comment on a number of questions, including: (1) What CMRS spectrum should be included in the cap? (2) How should the cap be applied with respect to geographic areas? (3) Should geographic overlap be considered in calculating attributable interests? (4) How should the cap be applied to designated entities? and (5) How should divestiture of ownership interests in violation of the spectrum cap be handled?

GTE opposes the imposition of a general CMRS spectrum aggregation limit because such action is unnecessary and will unduly restrain the legitimate activities of licensees. Moreover, the proposal is based on generalized concerns, and the *Further Notice* contains no enumeration of factual bases necessitating the imposition of a spectrum cap. Instead, reliance on service specific caps -- like those contained in the Commission's PCS rules -- is adequate to address any valid concerns that may exist about any single licensee dominating the CMRS marketplace. Furthermore, both the amount of available CMRS spectrum and the construction and operation requirements

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45 *Id.* at ¶ 93.

46 *Id.* at ¶ 101.

set forth in specific CMRS service rules help to ensure that no entity may hoard spectrum in order to disadvantage its competitors.

A limit on total CMRS spectrum that could be licensed to a single entity also may unfairly limit the participation of some entities in new technologies as spectrum and technological improvements become available. Certainly at the level proposed in the *Further Notice*, many participants in cellular as well as broadband PCS may find themselves unduly restricted from continued participation in a fully competitive CMRS marketplace. This in turn will deprive the public of the well-recognized benefits brought by existing service providers to new services. For example, in its *Broadband PCS Reconsideration Order*, the Commission explained that it adopted a more liberal attribution standard for cellular/PCS cross ownership than that applied in the context of PCS multiple ownership (20 percent as opposed to 5 percent) in order to allow PCS to enjoy the benefits of cellular participation.[47] Specifically, the Commission noted the expertise and economies of scope brought by cellular carriers, and indicated that cellular participation would be likely to help promote the early development of PCS.[48]

Furthermore, the Commission's PCS rules already significantly limit a licensee's ability to aggregate CMRS spectrum. Specifically, the broadband PCS rules restrict most licensees to a total of 40 MHz of licensed broadband PCS spectrum in a geographic area.[49] The Commission's rules further provide that, in determining whether an entity complies with this limit, all PCS ownership interests of 5 percent or more will be attributed to the holder of such interest.[50] Cellular carriers seeking to

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47 Amendment of the Commission's Rules To Establish New Personal Communications Services, FCC 94-144 at ¶ 110 (June 13, 1994) (Memorandum Opinion and Order) [hereinafter *"Broadband PCS Reconsideration Order"*].

48 *Id.*

49 *See Broadband PCS Second Report and Order*, 8 FCC Rcd at 7728.

50 *Id.*